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DINNIE BURNHAM,
Appellant,
v.
DEPARTMENT OF CORRECTIONS,
Respondent.

)
) Case No. RED-01-0027
)
) FINDINGS OF FACT, CONCLUSIONS OF
) LAW AND ORDER OF THE BOARD
)
)
)
)

1.1 **Hearing.** This appeal came on for a hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, and GERALD L. MORGEN, Vice Chair. For purposes of hearing, this matter was consolidated with Ferguson v. Dep't. of Corrections, PAB Case No. RED-01-0029. The hearing was held in the Superintendent's Conference Room at the Monroe Correctional Complex in Monroe, Washington, on July 23, 2002. RENÉ EWING, Member, did not participate in the hearing or in the decision in this matter.

1.3 **Nature of Appeal.** Appellant was given a reduction in salary for neglect of duty and willful violation of published employing agency or Department of Personnel rules or regulations. Respondent alleged that Appellant violated the confidentiality of information contained in an inmate's medical file.

1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

II. FINDINGS OF FACT

2.1 Appellant Dinnie Burnham is a Registered Nurse (RN) 2 and a permanent employee of Respondent Department of Corrections (DOC) at the Monroe Correctional Complex (MCC) hospital. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on August 2, 2001.

2.2 Appellant has been a nurse for 24 years. She has been employed by Respondent since November 1991. Appellant was aware of her responsibility to be familiar with agency policies and she was aware of her responsibility to protect the confidentiality of patients' medical information.

2.3 Appellant has a history of prior corrective and disciplinary actions at MCC including:

- February 2001: a letter of counseling for spreading rumors and making innuendos in the work place;
- September 1997: a reduction in salary for inappropriately interfering in a new employee's orientation and for using state resources for personal purposes; and a letter of reprimand for failing to appropriately chart a medical encounter with an inmate;
- May 1997: a letter of reprimand for two separate incidents of inappropriate behavior;
- April 1997: a letter of counseling for engaging in an argument with another staff person in the presence of inmates;
- August 1995: a counseling memo for inappropriate behavior; and
- October 1993: a letter of counseling for not receiving approval before exchanging shifts with another employee.

1 2.4 By letter dated July 5, 2001, Respondent notified Appellant of her two-step reduction in
2 salary, effective August 1, 2001 through October 31, 2001. Respondent charged Appellant with
3 neglect of duty and willful violation of published employing agency or department of personnel
4 rules or regulations. In summary, Respondent alleged that Appellant violated an inmate's
5 confidentiality when, without written authorization from the inmate, she provided the
6 Superintendent with a copy of the inmate's Mental Health Progress Note Primary Encounter Report
7 Form (PERF).

8
9 2.5 Appellant was a union shop steward. On either March 5 or 6, 2001, Licensed Practical
10 Nurse (LPN) Karen Ferguson contacted Appellant and asked to meet with her. Ms. Ferguson had
11 been having problems with her supervisor, RN 3 Karen Dahlbeck. Ms. Ferguson was concerned
12 that her supervisor's husband, who was also an employee at MCC, had inappropriately used Ms.
13 Ferguson's name in an inmate's PERF note.

14
15 2.6 On March 6, 2001, prior to meeting with Superintendent Robert Moore, Appellant and Ms.
16 Ferguson met at a restaurant outside of the institution and Ms. Ferguson showed Appellant a
17 redacted copy of the PERF note. Both Appellant and Ms. Ferguson had difficulty reading the
18 signature of the person who wrote the note. Appellant thought that Superintendent Moore would
19 also have difficulty reading the note. Therefore, she transcribed the note as being authored by R.
20 Dahlbeck because Ms. Ferguson told her that Mr. Dahlbeck had written the note. However, the
21 note was not written by Mr. Dahlbeck, rather the note was written by Psychologist Douglas
22 Campbell.

23
24 2.7 On March 6, 2001, Appellant, Ms. Ferguson, and shop steward Dan Grey met with
25 Superintendent Moore. After clarifying that Superintendent Moore was authorized to view inmate
26

1 medical records, Appellant showed him the copy of the PERF note. The inmate's name was
2 redacted from the note. Appellant refused to show the note to Mr. Grey because he was not
3 authorized to see medical records. Superintendent Moore told Ms. Ferguson that he would look
4 into her concerns.

5
6 2.8 Following the meeting, Superintendent Moore discussed the situation with Associate
7 Superintendent Carol Grandmontagne. Ms. Grandmontagne talked with Health Care Manager
8 William Doran. Mr. Doran was concerned that inmate medical information had been
9 inappropriately disclosed in violation of the medical information disclosure policies and nursing
10 standards.

11
12 2.9 On March 20, 2001, Mr. Doran initiated an Employee Conduct Report (ECR) alleging, in
13 part, that for personal reasons and without written authorization from Inmate N, Appellant accessed
14 and transcribed a copy of the inmate's PERF.

15
16 2.10 Following completion of the ECR process, the report and investigation information was
17 forwarded to Superintendent Moore.

18
19 2.11 Superintendent Moore considered the ECR information and Appellant's response to the
20 allegations. He agreed with the administrative findings of the ECR. He determined that Appellant
21 should have known that it was wrong to make a copy or have possession of the PERF note and that
22 it was wrong to use an inmate's medical information for personal reasons.

23
24 2.12 Because Appellant asked him if he was authorized to see the PERF note, Superintendent
25 Moore concluded that she was sensitive to the issue of patient confidentiality. However, he
26

1 determined that she violated department policy when in her role as a shop steward, not as a health
2 care provider, she had possession of a copy of an inmate's confidential medical information.
3 Superintendent Moore determined that Appellant neglect her duty to maintain the confidentiality of
4 inmate medical and mental health information; neglected her duty to use the inmate's medical
5 information for legitimate health care issues; and failed to treat and serve the inmate fairly,
6 equitably, and with concern for his welfare. Superintendent Moore found that Appellant's actions
7 violated the Department's Employee Handbook and DOC Policy 640.020.

8
9 2.13 After considering Appellant's misconduct in this instance and her past disciplinary history,
10 Superintendent Moore concluded that a course of progressive discipline warranted a reduction in
11 salary. By letter dated July 5, 2001, Superintendent Moore gave Appellant a three-month, two-step
12 reduction in salary.

13
14 2.14 The Department of Corrections Employee Handbook, states, in relevant part:

15 The department's main objectives are to:

16

- Treat all offenders . . . fairly and equitably;

17

18 The Department of Corrections subscribes to a . . . commitment to professional . . .
19 service.

20

21 As a representative of the Department of Corrections, **you will be expected to:**

22

- Serve each offender with appropriate concern for their welfare and with no
purpose of personal gain;

23

1 2.15 The Department of Corrections Policy Directive DOC 640.020 addresses, in part, disclosure
2 of health records. Under disclosure by *Health Care Provider*, the directive states, in part:

3 A. Information contained in an offender's health record, including information the
4 offender shares with *health care* professionals, is confidential unless disclosure is
5 otherwise authorized by law.

6 B. All *health care information* disclosures will be documented as directed by the
7 Department's Health Records Guidelines.

8 2.16 Under *Disclosure Without Offender's Authorization*, Policy Directive DOC 640.020 states,
9 in part:

10 D. Information may be disclosed and/or exchanged with health services providers
11 in the community to ensure continuity of an offender's health care in accordance with
12 RCW 70.02.050 (1)(a).

13
14 F. Health information may be disclosed in other circumstances, as permitted by
15 RCW 70.02.050 or RCW 70.02.900.

16 2.17 Under *Security Safeguards*, Policy Directive DOC 640.020, states in part:

17 A. All Department . . . employees . . . within the Department having access to
18 health information will:

19
20 (3) Be advised of the consequences for misuse or abuse of health information,
21 including disciplinary action.

22 2.18 RCW 70.02.010 defines the terms used in Chapter 70.20. RCW and provides, in part:

23 "Health care information" means any information, whether oral or recorded in any
24 form or medium, that identifies or can readily be associated with the identity of a
25 patient and directly relates to the patient's health care. The term includes any record
26 disclosures of health care information.

1 2.19 RCW 70.02.020 discusses disclosure of health care information by health care providers.

2 The RCW states, in relevant part:

3 Except as authorized in RCW 70.02.050, a health care provider . . . may not disclose
4 health care information about a patient to any other person without the patient's
5 written authorization. . . .

6 Health care providers . . . shall chart all disclosures . . . of health care information,
7 such chartings to become part of the health care information.

8 2.20 RCW 70.02.050 discusses disclosure of health care information without the consent of the
9 patient. The RCW states, in relevant part:

10 (1) A health care provider may disclose health care information about a patient
11 without the patient's authorization to the extent a recipient needs to know the
12 information, if the disclosure is:

13

14 (b) To any other person who requires health care information for health care
15 education, or to provide planning, quality assurance, peer review, or administrative,
16 legal, financial, or actuarial services to the health care provider; or for assisting the
17 health care provider in the delivery of health care

18

19 (d) To any person if the health care provider reasonably believes that disclosure
20 will avoid or minimize an imminent danger to the health or safety of the patient or
21 any other individual, however there is no obligation under this chapter on the part of
22 the provider to so disclose;

23

24 (g) For use in a research project that an institutional review board has determined:

25

26 (iv) Contains reasonable safeguards to protect against identifying, directly or
indirectly, any patient in any report of the research project; and

. . . .

(i) To an official of a penal or other custodial institution in which the patient is
detained;

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2
3 **III. ARGUMENTS OF THE PARTIES**

4 3.1 Respondent argues that Appellant transcribed the information in the PERF note incorrectly,
5 that her actions were not intended to further the inmate's care, and that by disclosing the information
6 to the Superintendent, she failed in her duty to protect the inmate's medical information.
7 Respondent contends that Appellant was aware of the policy regarding disclosure of medical
8 information, yet for personal reasons, she willfully disclosed and discussed information from the
9 inmate's medical file. Respondent contends that Appellant committed misconduct when she
10 erroneously transcribed and discussed with Ms. Ferguson, Mr. Grey and the Superintendent
11 information from an inmate's medical file. Respondent contends that Appellant neglected her duty
12 and violated the trust placed in her as a health care provider. Respondent argues that Appellant's
13 actions were not intended to assist the inmate, did not protect the confidentiality of the inmate's
14 medical information, created a liability for the institution, and constituted a willful violation of
15 common sense nursing standards and agency policy. Respondent contends that Appellant's actions
16 did not further the mission of the institution, that she had received prior discipline, and that in this
17 case, a reduction in salary was warranted.

18
19 3.2 Appellant argues that the core issue before the Board is whether she improperly disclosed
20 information, as defined in the statute, to the Superintendent. Appellant contends that the statute
21 contains exceptions that allow for disclosure of information. Appellant further contends that the
22 inmate's name and number were redacted from the document before she shared the document with
23 the Superintendent. Appellant asserts that she was sensitive to the need to maintain the
24 confidentiality of the inmate's medical information, that she did not violate the inmate's
25 confidentiality, that she did not violate the statute or policy, and that she did not neglect her duty.
26 Appellant argues the discipline is too severe and should be overturned.

IV. CONCLUSIONS OF LAW

4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter herein.

4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting the charges upon which the action was initiated by proving by a preponderance of the credible evidence that Appellant committed the offenses set forth in the disciplinary letter and that the sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983).

4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987).

4.4 Willful violation of published employing agency or institution or Personnel Resources Board rules or regulations is established by facts showing the existence and publication of the rules or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the rules or regulations. A willful violation presumes a deliberate act. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

4.5 Respondent has met its burden of proof. Appellant neglected her duty and willfully violated agency policies when for personal reasons, she utilized information taken from an the inmates' medical file without the inmate's permission and when she made an unauthorized and erroneous transcription of the PERF note. Appellant was not providing medical care to the inmate and

1 therefore, her actions were not taken out of concern for the inmate's welfare. Whether or not the
2 document was redacted or she was acting in her role as a shop steward does not mitigate Appellant's
3 misconduct. The fact remains that she inappropriately utilized the inmate's medical information.
4 Furthermore, as a shop steward, Appellant had a responsibility to advise Ms. Ferguson to comply
5 with agency policies rather than assist her in violating the policies.

6
7 4.6 Under the totality of the proven facts and circumstances, including Appellant's 24 years of
8 experience and knowledge of nursing practices and her demonstrated understanding of the
9 importance of protecting the confidentiality of patients' medical records, the disciplinary sanction of
10 a two-step, three-month reduction in salary is appropriate. The appeal should be denied.

11
12 **V. ORDER**

13 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Dinnie Burnham is denied.

14 DATED this _____ day of _____, 2002.

15 WASHINGTON STATE PERSONNEL APPEALS BOARD

16
17 _____
18 Walter T. Hubbard, Chair

19
20 _____
21 Gerald L. Morgen, Vice Chair

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23
24
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26
Personnel Appeals Board
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Olympia, Washington 98504